

CIVIL DOCKET

BARTROW
DAUGHERTY

UNITED STATES DISTRICT COURT

Jury demand date:

67-C-140

D. C. Form No. 106A Rev.

TITLE OF CASE		ATTORNEYS							
J. I. Case Credit Corporation, a Corp.		For plaintiff:							
vs		David C. Johnston, Jr. <i>8th Floor, City Natl Bldg</i> 945 Commerce Exchange Building Oklahoma City, Oklahoma <i>73102</i>							
Kenneth Zweiacher		Terry Shipley, 945 Commerce Exchange Bldg., Oklahoma City, Okla., 73102 405 232-3501							
Defendant and Third Party Plaintiff									
vs									
J. I. CASE CORPORATION and NEWMAN EQUIP- MENT CO., INC.		For defendant:							
Third Party Defendant		Palmer, Shepherd, Maner & Armstrong 308 Center Building Tulsa, Oklahoma <i>611-40074</i>							
		George E. Breever Mayo Building Tulsa, Oklahoma 74103 <i>44-44748</i>							
STATISTICAL RECORD		COSTS		DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 5 mailed <i>9-1-67</i>		Clerk		1967					
				8-1	Johnston	15 00			
				8-3-67	C/D No. 5			15 00	
J.S. 6 mailed <i>3-1-70</i>		Marshal							
Basis of Action: Replevin of Tractor		Docket fee							
		Witness fees							
Action arose at: Tulsa		Depositions							

DATE	PROCEEDINGS	Date Order or Judgment Noted
8-1-67	Complaint filed and summons issued. ds	
8-1-67	Replevin Bond, filed. J. I. Case Credit Corp., principal and Seaboard Surety Co. as Surety, in the sum of \$22,000.00. ds	
8-1-67	Affidavit for Replevin, filed. ds	
8-1-67	Issued Writ of Replevin. ds	
8-2-67	Return on summons, filed. Served Kenneth Zweischer at Owasso, Oklahoma, on 8-1-67. (\$8.28) ds	
8-2-67	Writ of Replevin filed. Return filed. Executed by taking possession of the property described therein and after holding same 24 hours, delivered same to plaintiff. J.I. Case Credit Corp. h.(USM)	
8-21-67	Application for extension of time in which to answer; and order granting extension of time in which to answer. It is ordered that defendant granted additional 15 days from this date in which to answer.(NCH-h)h	
9-5-67	Defendant, Kenneth Zweischer's, Answer, filed. ds	
9-15-67	Third Party Complaint, filed. Summons Issued.	
9-20-67	Appearance of Terry Shipley for plaintiff, filed. e	
10-4-67	Application for extension of time in which to plead, filed by plaintiff, and ten days from date granted plaintiff, J. I. Case Credit Corp. in which to plead to counterclaim and 3rd party complaint, by NCH, Clerk. ds	
10-4-67	Return on service of summons filed. Executed by serving J.I. Case Co., by serving Corporation Co., at Okla. City, Oklahoma on 9-27-67.(USM \$5.92) h	
10-9-67	Third-party summons returned, filed - served Newman Equipment Company at Tulsa, Oklahoma on 10-6-67. (Fee \$5.92) b	
10-11-67	Plaintiff's Motion to Strike insufficient defenses in defendant's Answer to Complaint, filed. Brief in support thereof filed. e	
10-11-67	Plaintiff's Motion to Dismiss Counter Claim of defendant, filed. Brief in support thereof filed. e	
10-11-67	Plaintiff's Motion to Strike Defendant's Third Party Complaint, filed. Brief in support thereof, filed. e	
10-23-67	Third Party defendant, J. I. Case Co. motion to strike 3rd party complaint of defendant, Kenneth Zweischer, with brief in support thereof, filed. ds	
10-23-67	Plaintiff's motion for judicial sale, with brief attached, filed. ds	
10-25-67	Third Party Defendant, Newman Equipment Co., Inc.'s Motion to strike, or in the alternative, to dismiss defendant's third party complaint, filed.	
10-25-67	Brief in support of 3rd party defendant, Newman Equipment Co., Inc.'s motion to strike, or in the alternative, to dismiss defendant's 3rd party complaint, filed. ds	
12-11-67	Hearing held on motions. Plaintiff's motion for judicial sale sustained; plaintiff's motion to strike insufficient defenses in defendant's answer to complaint sustained, all except defenses of fraud and misrepresentation; plaintiff's motion to dismiss counter claim of defendant, taken under advisement; Plaintiff's motion to strike defendant's third party complaint and motion to strike third party complaint, and Third Party defendant, Newman's motion to strike, or in the alternative, to dismiss defendant's third party complaint are each overruled. Attorney' Tom Palmer's request to inspect equipment granted. Plaintiff to prepare proper order within 5 days. (Allen E. Barrow-Judge)h	
12-28-67	Order of 12-11-67, filed. (AEB-J) w	
12-29-67	Answer of Third Party Defendant, J. I. Case Company, filed. w	
2-13-67	Answer of 3rd Party defendant, Newman Equipment Co., Inc. a corp. filed. ds	
2-28-68	Proof of publication, filed. w	
2-28-68	Notice of public sale with return, filed. Property sold to J. I. Case Credit Corp. for \$8,770.00. Marshal's fee: \$5.40. w	

(Continued on Page No. 3, Sheet No. 2)

DATE	PROCEEDINGS	Date Order or Judgment Noted
3-20-68	Marshal's return filed. Executed by offering for sale certain certain property(Tractor, etc.) as listed in Notice of Public Sale, which was published, at public auction at Tulsa, Oklahoma and further purchaser was the highest bidder and price was paid by said purchaser, amount received held until further order of court.(USM\$5.40) Commission \$146.55.h	
4-11-68	Order confirming sale, filed and entered. copy delivered to U. S. Marshal. ds	
5-28-68	Counsel to hold pre-trial and file pre-trial order on or before 7-3-68. (AEB-J)g	
6-26-68	Defendant Zweiacher granted 5 days from 7-3-68 to file proposed pre-trial order. (AEB-J)g	
7-22-68	Pre-trial order filed. (Allen E. Barrow-Judge) js	
2-24-69	Minute Order: Court orders that case be re-assigned to Fred Daugherty, Judge.(AEB-J)h	
4-15-69	Order Overruling Plaintiff's motion to dismiss Counter-Claim of the Defendant filed. (AEB-J)h	
6-10-69	Case set for pre-trial hearing Wednesday 6-25-69 at 10:00 a.m.(FD-J)m	
6-20-69	Case stricken from pre-trial assignment of 6-25-69. (FD-J)m	
7-11-69	Case set for non-jury trial on August 5, 1969, at 9:30 A.M. (FD-J)g	
7-18-69	Plaintiff's motion for continuance of trial, filed. b	
7-22-69	Ordered by the Court that this case is stricken from the non-jury assignment of August 5, 1969 by agreement of counsel. (Fred Daugherty-Judge) b	
7-22-69	Defendant's interrogatories to J. I. Case Company, a corp. filed. ds	
7-22-69	Defendant's Interrogatories to J. I. Case Credit Corp. a corp., filed. ds	
7-24-69	Interrogatories, filed, by deft. Kenneth Zweiacher. js	
7-24-69	Letter of 7-17-69 from Johnston & Johnston to Judge Daugherty in re striking case from non-jury assignment, filed. b	
7-31-69	Joint objections to interrogatories, filed. g	
7-31-69	Brief in support of objections to interrogatories, filed. g	
8-11-69	Order filed, plaintiff's and third-party defendant's objections to interrogatories filed by defendant are overruled and they are granted 15 days from date of receipt of this order to answer them. (Fred Daugherty - Judge) b copies mailed. b	
8-27-69	Motion of pltf J.I. Case Credit Corp & Third Party defts. J.I. Case Co. and Newman Equipment Co. for additional time to answer interrogatories, filed. m	
8-27-69	Ordered that pltf & third party defts are granted 20 days within which to file answer/deft's interrogatories. (FD-J)m	
9-16-69	Newman Equipment Company, Inc., a corp.'s answers to interrogatories, filed. b	
9-16-69	Motion of plaintiff and J. I. Case Company and Newman Equipment Company, Inc. for extension of time to serve their answers to interrogatories propounded by defendant, Kenneth Zweiacher, filed. b	
9-16-69	Brief in support of motion above for additional time, filed. b	
9-18-69	Ordered by the Court that the plaintiff and third-party defendants are granted until September 27, 1969 within which time to answer the defendant's interrogatories. (Fred Daugherty - Judge) b	
9-25-69	Amended Answers to Interrogatories filed by Newman Equipment Co., Inc.h	
10-15-69	Case set for non-jury trial Wednesday 11-19-69 at 9:30 a.m. (FD-J)m	
10-28-69	Defendant Kenneth Zweiacher's motion for default judgment on his counterclaim against plaintiff J. I. Case Credit Corp. filed. ds (Continued)	

DATE	PROCEEDINGS	Date Order or Judgment Noted
10-28-69	Defendant Kenneth Zweischer's motion for default judgment on his 3rd party complaint against 3rd party defendant J. I. Case Company, a corporation, filed. ds	
10-28-69	Brief in support of defendant's motion to dismiss plaintiff's action and defendant's motion for default judgment against plaintiff on defendant's counterclaim pursuant to sanctions provided in Federal Rule 37(D), and for default judgment against J. I. Case Co., 3rd party defendant, filed. ds	
11-4-69	Ordered by the Court that the plaintiff and third-party defendant, J. I. Case Company are directed to show cause in writing within 5 days from date why the motions of the defendant and third party plaintiff to dismiss the complaint and for judgment on the third-party complaint should not be granted by the Court. (Fred Daugherty-Judge) b	
11-10-69	Plaintiff's and the third-party defendant's response to order to show cause, filed. b	
11-10-69	Third-Party defendant J. I. Case Company's answers to interrogatories, filed. b	
11-12-69	Answers to interrogatories served upon J. I. Case Credit Corp., filed. m	
11-13-69	Order filed, that the defendant Zweischer's motions for dismissal and for default judgments are overruled; and the requests of plaintiff and third party defendant J. I. Case Company to file answers to Interrogatories out of time are granted. (Fred Daugherty - Judge) Copies mailed parties. b	
11-14-69	Plaintiff's notice to take deposition of Rusty Emerick, filed. b	
11-18-69	Deposition of E. A. Emerick, filed. (Fees: \$82.00 pd by pltf & 3rd-party def. J. I. Case Co.) m	
11-18-69	Supplemental Answers to interrogatories served upon J. I. Case Credit corp. filed. ds	
11-18-69	Supplemental answers to interrogatories served upon J. I. Case Credit Corp. filed. ds	
11-18-69	Pre-trial (further) hearing held. (Fred Daugherty - Judge) b	
11-19-69	Case tried to the Court on November 19 and 20, 1969, Court fixes attorney's fees at \$1,000.00 and costs and finds for the third-party defendants J. I. Case Company and Newman Equipment Company dismissing 3rd party complaint and against the defendant Zweischer. Counsel for the plaintiff to prepare judgment and plaintiff permitted to withdraw its exhibit #4. (Fred Daugherty - Judge) (LC-CSR) b	
11-20-69	Trial exhibits, filed. b	
2-2-70	Judgment filed and entered, plaintiff have judgment for replevin of proceeds of tractor and ordered paid to plaintiff; plaintiff have and recover from Kenneth Zweischer costs and \$1,000.00 attorneys fee; that he take nothing on his counterclaim and judgment entered against Kenneth Zweischer on the third party complaint and it is dismissed. (Fred Daugherty - Judge) copies mailed. b	
3-12-71	Execution issued. ds	
3-29-71	Return on service of execution filed. Served Kenneth Zweischer, made demands for said judgment; return unsatisfied, nothing found upon which to levy. (\$11.16.) h	
3-11-76	Execution issued. g	
3-22-76	U.S. Marshals service return and filed, of execution; was unable to to satisfy the demand. t (Fees \$10.08)	